IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6836 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANLAL MOHANLAL RATHOD DECD.PARTNER OF AUTO ENGG.WORKS

Versus

CHHAGANLAL MOHANLAL RATHOD

Appearance:

MR VK JOSHI for Petitioners No. 1-1/G

MR PJ VYAS for Respondent No. 1

MS KATHA GAJJAR AGP for Respondents No. 2-5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

Rule returnable today. Learned advocate Mr. P.J Vyas appears for and waives service on behalf of the

respondent no. 1, learned AGP Ms. Katha Gajjar appears for and waives service on behalf of the respondents nos. 2 to 5.

The petitioner challenges the judgment and order dated 3rd May, 2001 passed by the State Government [Joint Secretary (Appeals), Revenue Department] in Revision Application No. 4 of 1999.

Mr. Joshi has submitted that the impugned order has been made in absence of the petitioner and the relevant documents have not been considered by the authority below. Mr. Vyas has contested the petition and has submitted that the Revision was set for hearing on several days, however, the petitioner did not remain present. The authority below, therefore, was constrained to proceed further in absence of the petitioner.

On perusal of the order it does appear that on the date in question, the petitioner did not remain present before the authority below nor did he move an application for adjournment. The impugned order cannot be said to have been made ex-parte as contended. However, it does appear that there are documents which has a bearing on the subject matter and the issue is also pending before the Civil Court. In that view of the matter, the authority below ought to have stayed its hand till the dispute pending before the Civil Court is decided.

In above view of the matter, the petition is allowed. The impugned order dated 3rd May, 2001 of the State Government [Annexure-A to the petition] is quashed and set-aside. The Revision is remanded to the State Government for hearing and disposal on merits, after the Civil Court resolves the dispute pending before it. Rule is made absolute to the above extent. There shall be no order as to costs.

[Miss R.M Doshit, J.]

Prakash*